

## **REMARKS**

Applicant appreciates the thorough examination of the present application as evidenced by the Office Action mailed December 18, 2007 (hereinafter "Office Action"). Applicant especially appreciates the indication that Claims 1 - 11 are patentable over the cited art of record. In response, Applicant has amended various paragraphs of the Specification to correct informalities. Applicant has also amended various claims to correct informalities to address the Section 112 rejections. Applicant respectfully submits, however, that the claims qualify as statutory subject matter under Section 101 and the cited reference fails to disclose or suggest, at least, the recitations independent Claim 12. Accordingly, Applicant submits that all pending claims are in condition for allowance. Favorable reconsideration of all pending claims is respectfully requested for at least the reasons discussed hereafter.

### **Objection to the Specification**

The Specification is objected to under 35 U.S.C. §112, first paragraph as containing terms that are not clear, concise, and exact. (Office Action, page 2). In response, Applicant has amended paragraph 2 to replace "tempus" with "tempo," paragraph 3 to replace "[T]o this respect" with "[T]herefore," paragraph 6 to replace "up to" with "or," and paragraph 17 to replace "only one a few" with "only a few." Applicant has not replaced the term "artefacts" in paragraph 7 with a different term as Applicant submits that use of the term is clear to one skilled in the relevant art. The Office Action states that the term "beep" is used in paragraph 41, but Applicant cannot find any instance of the term "beep." Applicant notes that the term "keep" is used and the Office Action may have mistakenly misread "keep" as "beep."

### **Section 101 Rejection**

Claims 1, 2, 5, 6, and 9 - 11 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. (Office Action, page 2).

With respect to Claims 1, 2, 5, 6, and 9 - 11, the Office Action states that these claims do not produce any tangible, real world result and, therefore, recite non-statutory subject matter. (Office Action, page 2). As discussed in the Manual Of Patent Examining Procedure

(MPEP):

The claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." *State Street*, 149F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research....MPEP, Sec. 2106(II.)(A).

Independent Claim 1 is directed to a method of adapting a score stored in a MIDI file for being reproduced in a mobile terminal and recites, in part:

...

determining, based on the identified values, one or more parameters suited for adapting the score with respect to the desired reproduction on the mobile terminal.

According to the recitations of independent Claim 1, parameters are determined that can be used to modify an MIDI file for reproduction on a mobile terminal via electroacoustic circuitry, which is clearly a tangible and useful result. Accordingly, Applicant submits that independent Claim 1 and Claims 2, 5, 6, and 9 - 11, which depend therefrom, qualify as statutory subject matter 35 U.S.C. §101.

### **Section 112 Claim Rejections**

Claims 1 - 11 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. (Office Action, page 3). In particular, the Office Action objects to the use of the construct "and/or" in Claims 1 and 5 and the phrase "adapting the score" in Claims 9 and 10. (Office Action, page 3). In response, Applicant has amended Claims 1, 5, 9, and 10 to remove the objectionable wording.

### **Claims 12 - 14 are Patentable**

Independent Claims 12 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent Publication No. 2002/0122559 to Fay et al. (hereinafter "Fay"). (Office Action, page 4). Independent Claim 12 is directed to a mobile terminal adapted to store and reproduce a score in the format of a MIDI file and recites, as amended, in part:

...

means for determining, based on the identified values, one or more parameters suited for adapting the score with respect to the desired reproduction on the mobile terminal;  
wherein said score is adapted to a transfer function of the electroacoustic reproduction circuitry.

According to the recitations of independent Claim 12, a mobile terminal includes means for determining one or more parameters that are suited to adapt a score for a desired reproduction thereon. In particular, the adaptation is for a transfer function of the mobile terminal's electroacoustic reproduction circuitry.

In sharp contrast, Fay discloses an audio buffer that includes one or more audio effects that modify audio data received from an audio data source. (Fay, Abstract). The audio generation system generates audio events that are processed and rendered by separate audio processing components of a computing device or system. (Fay, paragraph 40). The audio sources provide digital samples from MIDI files, which are rendered by an audio rendition manager. (Fay, paragraphs 44 and 45). Applicant submits that Fay does not disclose determining parameters for adapting a score in a mobile terminal and for a transfer function of the mobile terminal's electroacoustic reproduction circuitry.

With regard to determining parameters for adapting a score in a mobile terminal, Fay discloses a remote computing device, such as portable computer that can connect via a LAN and network adapter to a computer system 902. The computer system 902 includes the means to process the MIDI files. (Fay, FIG. 9). A computer system is entirely different than a mobile terminal, which is typically small and generally does not have the power capacity for sound reproduction.

With regard to determining parameters for adapting a score for a transfer function of the mobile terminal's electroacoustic reproduction circuitry, Applicant acknowledges that Fay discloses determining parameters in the section "Audio Effect Objects and Methods" in paragraphs 162 - 190. These parameters are based on specific effects, which are added to audio signals (Fay, paragraph 169) and specify which type of resource is to be allocated (Fay, paragraph 160). For example, the gain parameter identifies an output gain of an audio signal after compression, which is by default zero dB (Fay, paragraph 167). In contrast, Claim 12

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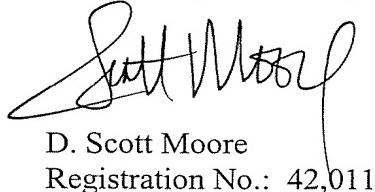
recites determining the parameters to adapt a score from sampled data, not from a compressed version of the sampled data. Moreover, Fay does not describe determining parameters to adapt a score for a transfer function of electroacoustic reproduction circuitry. Based on steps 704 and 714 in FIG. 7 of Fay, the availability of hardware resources is checked, but there is no mention of taking into consideration the transfer function of electroacoustic reproduction circuitry.

For at least the foregoing reasons, Applicant respectfully submits that independent Claim 12 is patentable over Fay, and that dependent Claims 13 and 14 are patentable at least by virtue of their depending from an allowable claim.

### CONCLUSION

In light of the above amendments and remarks, Applicant respectfully submits that the above-entitled application is now in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,



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### CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on March 18, 2008.



Audra Wooten